

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Favian Hayes,)	C/A NO. 4:09-3324-CMC-TER
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Simon Major, Director of SLRDC;)	
Ofc. Dixon; Ofc. Gardner; Daniel Jackson,)	
inmate at SLRDC; and Major Darnell)	
McGhaney,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pre-trial proceedings and a Report and Recommendation ("Report"). On March 21, 2011, the Magistrate Judge issued a Report recommending that Plaintiff's complaint be dismissed with prejudice for failure to prosecute. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so.

In response to the Report, Defendants supplied copies of Plaintiff's responses to Defendants' motion for summary judgment which were served on Defendants but were not filed with the court. Dkt. #83 (filed Mar. 23, 2011). Additionally, Plaintiff filed objections to the Report on April 4, 2011.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court.

See Mathews v. Weber, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After conducting a *de novo* review as to objections made, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff’s objections, the court agrees with the conclusions of the Magistrate Judge. Plaintiff offers no evidence – either in his responses to Defendants’ motion for summary judgment or in his objections – that he exhausted administrative remedies before bringing suit.

Therefore, Defendants’ motion for summary judgment is granted, and this matter is dismissed without prejudice for failure to exhaust administrative remedies. *See Bryant v. Rich*, 530 F.3d 1368, 1375 n.11 (11th Cir. 2008) (noting that district court’s dismissal without prejudice on summary judgment motion proper where “neither party has evidenced that administrative remedies at [the correctional facility] are absolutely time barred or otherwise clearly infeasible.”).

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
May 2, 2011